

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Town Square Developers, LLP,
Petitioner-Appellant,

v.

Johnson County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-52-0673
Parcel No. 1006419001

On September 22, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Town Square Developers, LLP, was represented by Attorney Michael J. Pugh of Bradley & Riley, PC, Iowa City, Iowa. The Johnson County Board of Review was represented by Assistant County Attorney Andrew B. Chappell. The hearing was held in conjunction with Docket No. 09-52-0674 and Docket No. 10-52-0041. The Appeal Board now having examined the entire record, having heard the testimony, and being fully advised, finds:

Findings of Fact

Town Square Developers, LLP (Town Square), owner of property located at 501 12th Avenue, Coralville, Iowa, appeals from the Johnson County Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2009, assessment and valued at \$4,632,800. This was an increase from the 2007 assessment of \$2,642,200 set by this Board.¹ There is no land and structure breakout of the assessment. We find the property record card was not changed to reflect the value set by this Board.

¹ Although the actual vacancy of this property improved over this period, a \$2 million increase appears high.

Town Square protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). It asserted the fair market value of the property was \$2,566,440. The Board of Review denied the protest.

Town Square then appealed to this Board asserting the same ground; and it again requested an assessed value of \$2,566,440.

According to the property record card, the subject property's site is 43,600 square feet. It is improved with a two-story, brick building built in 2002, which has a 24,384 square feet above grade and a full basement used as a parking garage. The building has one elevator and a sprinkler protection system.

Ann Fletcher, an accountant for Charles Skaugstad, Jr. who is a partner in Town Square, testified on behalf of Town Square. Fletcher mentioned that Town Square searched for comparable sales that occurred in the last twenty-four months and was unable to find any. Fletcher also testified that Town Square believes the income approach is appropriate for the valuation of this commercial property, which is how the Johnson County Assessor initially assessed the property. Fletcher stated, however, that Town Square believes the capitalization rate should reflect the higher risk inherent with uncertain cash flow. She believes a capitalization rate between 8% and 12% is more appropriate than what was apparently used in the original assessment.

Town Square submitted an income and expense statement and an income approach summary (part of Exhibit 1) for the subject property illustrating a net income and final value with five different capitalization rates adjusted by a tax rate of 3.65%. Fletcher prepared this document, as she is thoroughly familiar with the property's income and expenses. The income and expense information was based on actual rent. While this income may be equivalent to market rent, no evidence was provided to substantiate that premise. The actual vacancy rate used by Town Square was 15%. Fletcher's analysis indicated assessed values (using actual income, capitalized at rates between 8-12%

and assuming a 15% vacancy rate) ranged from \$80 to \$129 per square foot, or total values of \$3,233,775 down to \$2,407,251, while the subject property is assessed at \$180 to \$190 per square foot. Fletcher opined that based on the cash flow information Town Square provided to the assessor, the assessor must have used a capitalization rate between 5% and 6% to set the original assessment. We cannot verify this assumption since the capitalization rate used by the assessor was not provided to Town Square.

Fletcher testified that she contacted Johnson County Assessor William Greazel regarding the 41% increase in the assessment from 2007/2008 to the 2009 assessment. In response to her inquiry, Greazel responded in an email with a revised value for the property. We note this email communication was not provided as an exhibit. Fletcher believed Greazel would recommend this value to the Board of Review. The revised value was \$3,604,200. Fletcher testified that at the Board of Review hearing, Greazel did not present the revised value for 2009 nor did he speak on Town Square's behalf. Nevertheless, Fletcher admitted the value was provided to the Board of Review in a chart that she prepared.

Town Square also submitted a review appraisal report by Keith J. Westercamp, President of Appraisal Associates Company, Cedar Rapids, Iowa. Westercamp performed an appraisal review of an appraisal completed by Kyran J. "Casey" Cook of Cook Appraisal, LLC, Iowa City, Iowa. Cook's appraisal of the subject property for the January 1, 2009, assessment was done at the request of Greazel.

Cook's appraisal valued the subject property for January 1, 2009, at \$3,500,000. Cook completed all three approaches to value: cost, sales comparison, and income. Westercamp reviewed each of these approaches. Overall, Westercamp believed the appraisal was thorough; however, he took issue with several items. Westercamp reached his own conclusion of value by relying on some of the information used by Cook and supplementing it with his own research.

First, Westercamp testified that the cost approach by Cook does not reflect the recession that has taken place the last few years and that most buyers would accept the fact that replacement cost for the property would exceed market value. Westercamp believes a buyer interested in purchasing the subject property would not use this approach. Ultimately, Westercamp gave no weight to the cost approach and testified that if he had developed a complete appraisal he would not have completed this approach because the improvements were seven years old and due to the economic factor already noted.

Regarding the sales approach, Westercamp testified there have been very few, if any, comparable sales in the last few years. Westercamp also questions the time period of the sales and the fact that no adjustment was made for this element. Westercamp testified the best sale used by Cook was Sale 5, which represented a good location. In his review, he noted the property does not have the garden level, and most importantly when the property sold in 2005, the market was near its peak and the building was fully leased. Westercamp would adjust Sale 5 by -10%, to reflect location and time. The adjustment would reflect a price of \$125 per square foot. As applied to the subject property, it would result in a rounded value of \$3,050,000.

Finally, Westercamp also had concerns with Cook's income approach to value. Westercamp noted in his review that Cook did not address the fact that many of the leases would be up for renewal in the next few years. Cook used a market capitalization rate of 8.5%. Westercamp believes the capitalization rate should be 9.4%. Westercamp believes this rate is supported from consulting with brokers in the market, consulting national sources, including RealtyRates.com, and considering the data presented by Cook. Westercamp also performed a gross income estimate fee simple and determined the income approach indicates a value of \$2,600,000 using a 9.4% capitalization rate, a higher management/leasing rate, \$14.00 per-square-foot market rent, and 8% vacancy.

After doing a total review of the Cook appraisal, in Westercamp's opinion, Cook's appraisal would reflect the upper end of the range in value. In the current market, he believes the upper end would be extremely difficult to obtain. He reiterated his belief that the cost approach is not considered a good approach for valuing the subject property. Westercamp also believes the appraisal was not consistent regarding rental rates and vacancy in the income approach. He noted the current asking rent price for the subject property is below the lease comparables, which would indicate location or income obsolescence. Although this information is after the January 1, 2009, assessment date, it does support the fact the market did decrease since the January 1, 2007, assessment set by this Board

Westercamp's final reconciliation of value in his review appraisal is \$2,700,000, as of January 1, 2009. We find the evidence and testimony of Westercamp to be credible.

Both Town Square and the Board of Review submitted Cook's appraisal. Cook testified on behalf of the Board of Review.

Cook, as previously noted, valued the subject property at \$3,500,000, as of January 1, 2009, after completing all three approaches to value. He valued the subject property using the sales comparison approach at \$3,660,000; the cost approach at \$4,040,000; and the income approach at \$2,900,000.

Cook completed the cost approach to value. He relied on *Marshall & Swift Valuation Service* for cost information. He estimated the replacement cost of the improvements and depreciated the subject property based on age-life depreciation and determined the land value from the market. Cook made no adjustment for possible over-improvements or economic condition.

Cook used five comparable sales in his sales comparison approach to value: three from Coralville and two from Iowa City. Sale 1 was partially vacant and the top floor of a two-story condominium development, which sold in November 2008. This sale was also to a church, which is possibly an exempt organization, and causes us to question whether the sale was arm's length despite

Cook's statement in his appraisal that he believes it was. Sale 2 is a multi-tenant, 3-unit strip center, and the buyer purchased all three units, which occurred in January 2007. Sale 3 was of two, main-floor condominium units. The sale took place in August 2008. Sale 4 occurred in October 2008 and was of an entire building in the Grand Rail Subdivision. Sale 5 sold in January 2005. It is the Grandview Office Plaza consisting of 28,239 square feet and having a sprinkler system and underground parking, which is comparable to the subject property. Cook adjusted these properties as explained in the appraisal. His net adjustments ranged from -3% to 25%. The appraisal notes that Cook found Sale 5 to be the most comparable to the subject; additionally, Sale 4 was also of an entire building. Cook testified that the market lacks good comparable sales for the subject property, but he used the best he could find.

Finally, in his income approach, Cook used market rents and market expenses. The leases Cook used were from four different buildings or projects in the Coralville and North Liberty market. The adjusted rents per square foot ranged from \$12.50 to \$16.70. He believed the lease comparables supported a market lease rate of \$14.00. Cook applied an 8% vacancy factor. Cook determined a Net Operating Income (NOI) of \$254,997 for the subject property. To determine a capitalization rate, Cook used the band of investment method to conclude a rate of 8.58% to 9.08%. He also used three sales in Coralville to extract the rate. The sales produced rates of 8.93%, 9.3%, and 9.6%. He then used two other sales in the town of North Liberty and determined rates of 7.7% to 7.9%. We find North Liberty not a comparable location for the subject property because it is smaller than Coralville and further from Iowa City. Cook also made an adjustment for the effective tax rate. The assessed value Cook used was the original assessed value of \$4,632,800 to make his effective tax calculation. The Board of Review conceded at hearing that this value is unsupported. Cook's final capitalization rate estimate was 8.80%.

The following chart summarizes the different conclusions of the two appraisers:

	Cost Approach	Sales Comparison Approach	Income Approach	Reconciled Value
Westercamp Review Appraisal	Found to be unreliable; did not do cost approach	\$3,050,000	\$2,600,000	\$2,700,000
Cook Appraisal	\$4,040,000	\$3,660,000	\$2,900,000	\$3,500,000

Gary Bilyeu, Deputy County Assessor, testified regarding Greazel's recalculated assessed value that was provided to Fletcher and the history of the assessment of the subject property. We give this testimony no weight since the Board of Review already acknowledged the current assessed value is unsupported and it considers Cook's value of \$3,500,000 to be correct.

This Board is well aware that the comparable sales approach is the preferred method to value property for assessment purposes. If no comparable sales exist, or sales alone cannot determine the market value of the property, one may turn to the use of other factors. *Compiano v. Bd. of Review of Polk County*, 771 N.W.2d 392, 398 (Iowa 2009). We find that Fletcher's, Westercamp's, and Cook's (in part) testimony indicate good, recent comparable sales for the subject property do not exist. Really, Cook's only good comparable sale was Sale 5, but that sale occurred in 2005, four years prior to the assessment date at issue. We also agree, to some degree, with Westercamp that the cost approach is questionable for the subject property; enough doubt has been raised about the current recession including 2009 and underground parking to question if obsolescence does, in fact, exist and would be hard to calculate. Considering these facts, we find the best and most reliable method of valuing the subject property, as of the assessment date, is the income approach.

We find all of the evidence shows the subject property is over assessed. Turning to the income approach as the best indicator of value, and examining the income approaches used by the two appraisers, we reject the capitalization rate used by Cook in his appraisal because his own data supports a higher rate of 9%. Using Cook's NOI of \$254,997, because it was based on market rents and expenses, and a 9% capitalization rate, we can conclude a value of \$2,833,300 for the subject property as of the assessment date. However, using these figures, the value does not account for the difference in vacancy rates and other adjustments in the different income approaches, and we find Cook's figures to be reliable since he conducted a complete appraisal. Additionally, we round the value upward to \$2,850,000 to reflect small consideration for the other approaches.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or

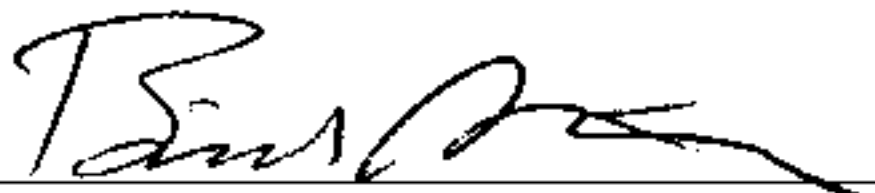
comparable properties in normal transactions are to be considered in arriving at market value. *Id.*; *Soifer v. Floyd County Board of Review*, 759 N.W.2d 775, 782 (Iowa 2009). The probable availability or unavailability of potential purchasers shall be considered in arriving at a market value. Iowa Code § 441.21(1)(b). If sales are not available, “other factors” may be considered in arriving at market value. *Id.* The assessed value of the property “shall be one hundred percent of its actual value.” *Id.* at § 441.21(1)(a). There is a need to look at the “other factors” approach as there was insufficient evidence of comparable sales in the record. As the finder of fact in the contested case hearings, it is PAAB’s duty to determine if a property is comparable. *Soifer*, 759 N.W. 2d at 783.

Town Square is claiming under Iowa Code section 441.37(1)(b) that the property is assessed for more than the value authorized by law. In an appeal that alleges the property is assessed for more than the value authorized by law, there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). A preponderance of the evidence shows the subject property is over assessed. In fact, the Board of Review concedes there is no support for the current assessment. Further, the evidence supports a finding that the sales approach alone cannot determine the value of the subject property. The sales used by both appraisers have few similarities to the subject property. We have also concluded the cost approach is unreliable. Turning to the income approach, Cook’s income approach adjusted for the capitalization rate of 9% is the best evidence of fair market value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Town Square property located in Coralville, Iowa, as determined by the Johnson County Board of Review is modified to \$2,850,000.

The Secretary of the State of Iowa Property Assessment appeal Board shall mail a copy of this Order to the Johnson County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly.

Dated this 22 day of November 2011.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>11-22</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
Signature:	